

## Commodity Credit Corporation, USDA

## § 1468.2

1468.35 Wetland Reserve Enhancement Partnerships.

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1468.37 Easement and 30-year contract participation requirements.

1468.38 The WRPO development.

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3865-3865d.

SOURCE: 80 FR 11048, Feb. 27, 2015, unless otherwise noted.

### Subpart A—General Provisions

#### § 1468.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Agricultural Conservation Easement Program (ACEP) administered by the Natural Resources Conservation Service (NRCS).

(b) The NRCS Chief may implement ACEP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Subpart B of this part sets forth additional requirements, policies, and procedures for implementation of the Agricultural Land Easements (ALE) component of ACEP.

(d) Subpart C of this part sets forth additional requirements, policies, and procedures for the Wetland Reserve Easement (WRE) component of ACEP.

(e) Easement lands previously enrolled under the Farm and Ranch Lands Protection Program (7 CFR part 1491), the Grassland Reserve Program (7 CFR part 1415), and the Wetlands Reserve Program (7 CFR part 1467) are considered enrolled in ACEP. Existing easements and agreements remain valid and enforceable, and subject to the legal framework in place at the time of enrollment, except that the long-term stewardship and management of these easements, and any ACEP funding made available for implementation, will be in accordance with this part.

#### § 1468.2 Administration.

(a) The regulations in this part will be administered under the general su-

pervision and direction of the NRCS Chief.

(b) NRCS may seek advice from the State Technical Committee on the identification of lands of statewide importance, development of a priority ranking process, and related technical matters.

(c) NRCS may delegate at any time its wetlands reserve easement management responsibilities to other Federal or State agencies or conservation organizations that have appropriate authority, expertise and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(d) NRCS may delegate at any time its wetlands reserve easement monitoring and enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(e) NRCS may consult Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations will compel NRCS to take any action which NRCS determines does not serve the purposes of the program established by this part.

(f) The Chief may allocate funds for purposes related to: encouraging enrollment by beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, Indian tribes, and veteran farmers or ranchers as authorized by 16 U.S.C. 3844; special pilot programs for easement management and monitoring; cooperative agreements with other agencies and organizations to assist with program implementation; coordination of easement enrollment across State boundaries; coordination of the development of easement plans; or for other goals of the ACEP found in this part.

(g) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or

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modifying any determination made under this part.

(h) The Chief may modify or waive nonstatutory, discretionary provisions of this part if the Chief determines the waiver of such discretionary provision is necessary to further the purposes of ACEP under the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the Food Security Act of 1985. The waiver must further ACEP purposes while also addressing whether the purpose and conservation objectives of the RCPP project(s) are consistent with the specific Wetland Reserve Easement (WRE) or Agricultural Land Easement (ALE) conservation purpose and objectives. No waiver will result in reducing the quality of wetland wildlife habitat that is restored under WRE, or the protection for agricultural viability under ALE.

(i) To assist in RCPP implementation the Chief may also waive the applicability of the limitation in section 1001D(b)(2) of the Food Security Act of 1985 for participating landowners if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

#### § 1468.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

*30-year Contract* means an ACEP–WRE contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

*Access* means legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

*Acreage owned by Indian Tribes* means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe or the Bureau of Indian Affairs.

*Active agricultural production* means that on lands that meet the definition of being in agricultural use, agricultural or forest-related products or live-

stock are being produced or have been produced within one year of the date of application by an eligible entity for funding under subpart B of this part. Land may also be considered in active agricultural production if it is current or former CRP land that is planted, considered planted, or in conserving use as determined by NRCS.

*Agreement* means the document that specifies the obligations and rights of NRCS and any person, legal entity, or eligible entity who is participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized goods and services associated with program implementation. Agreements may include but are not limited to an agreement to purchase, a wetland reserve easement restoration agreement, a cooperative agreement, a partnership agreement, or an interagency agreement.

*Agreement to purchase* means the legal document that is the equivalent of a real estate purchase and sale contract. The landowner signs the agreement to purchase, which is the authorization for NRCS to proceed with the wetland reserve easement acquisition process and to incur costs for surveys, title clearance, due diligence activities, and closing procedures on the easement.

*Agricultural commodity* means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters or sugarcane planted and produced in a State.

*Agricultural uses* means those activities defined by a State's farm or ranch land protection program, or where no program exists, by the State agricultural use tax assessment program. However, if NRCS determines that a State definition of agricultural use is so broad that an included use would constitute a violation of Federal law, degrade soils, the agricultural nature of the land or the related natural resources, NRCS reserves the right to impose greater deed restrictions on the property to be subject to an agricultural land easement. These deed restrictions would narrow the State definition of agricultural use in order to meet Federal law, or to protect soils,